THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.17149 OF 2006

ORDER:

This writ petition is filed seeking a *mandamus* declaring the notice dated 22.3.2006 issued by the respondents-Bank under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "Securitisation Act"), as arbitrary and illegal.

The petitioner is a partnership firm engaged in the business of sale of household articles. It is not in dispute that the petitioner-firm availed financial assistance from the 1st respondent-Bank by hypothecating stock-in-trade, apart from mortgaging immovable properties belonging to one of the partners of the petitioner-firm. Since the petitioner committed default in repayment of the loan amount, the 1st respondent-Bank got issued a notice dated 13.2.2006 calling upon the petitioner to repay the entire outstanding amount of Rs.12,40,981/- together with interest within 15 days. The petitioner-firm gave a reply dated 7.3.2006 making a request for One Time Settlement by reducing the rate of interest. Without responding to the said request, the 1st respondent-Bank invoked the provisions of the Securitisation Act and issued a demand notice dated 22.3.2006 under Section 13(2) of the Securitisation Act calling upon the petitioner to discharge the dues in full together with interest within 60 days, failing which the secured assets would be proceeded against for realization of the dues without any further notice. Questioning the said notice dated 22.3.2006, this writ petition is filed contending *inter alia* that since the petitioner-firm has not lost its viability, the steps initiated by the 1st respondent-Bank for recovery of the amount by enforcing its rights under the Securitisation Act are arbitrary and unwarranted. It is also contended that the petitioner-firm is neither a willful defaulter nor a chronic defaulter within the meaning of the guidelines of the Reserve Bank of

India and, therefore, there is no justifiable reason to classify the account of the petitioner-firm as Non-Performing Asset (NPA) and, consequently, the impugned proceedings initiated by the respondent under the Securitisation Act are illegal and without jurisdiction. It is alleged that as a matter of fact, the loan account of the petitioner-firm was never classified as NPA within the meaning of Section 2(o) of the Securitisation Act.

In the counter-affidavit filed on behalf of the 1st respondent-Bank it is stated that the petitioner's account was classified as NPA on 31.12.2005 following the RBI guidelines in view of regular defaults committed by the petitioner-firm in repayment of the amounts and also on account of its failure to submit stock statements in terms of the sanction order.

I have heard the learned counsel for both the parties and perused the material on record.

As could be seen from the counter-affidavit, it is clear that the impugned notice dated 22.3.2006 was issued after classifying the petitioner's account as NPA on 31.12.2005. Even assuming that the action of the 1st respondent-Bank in declaring the petitioner's account as NPA was not in accordance with law on any ground whatsoever, it is always open to the petitioner-firm to raise such objection as provided under sub-section (3-A) of Section 13 of the Securitisation Act, in which event, the 1st respondent-Bank is bound to consider the same. In case such objections are not accepted, the reasons for such non-acceptance shall be communicated to the petitioner within one week of receipt of such a representation. Having failed to avail such an efficacious alternative remedy available under the Act, the petitioner cannot straight away maintain this writ petition under Article 226 of the Constitution of India.

For the aforesaid reasons, I am not inclined to entertain this writ petitioner and the same is accordingly, dismissed. No costs.

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G. ROHINI, J.

Dt.15-6-2007.
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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.17149 OF 2006

DATED:15-06-2007

Between:

M/s Novakar Collections,
a partnership firm, represented by its
Partner- Smt. Vimala Surana,
7-2-682/1, Market Street,
Secunderabad.. ... Petitioner.

And

Indian Overseas Bank,
Represented by its Chief Manager,
Rashtrapathi Road Branch,
Secunderabad and another. .. Respondents